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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/009,837	01/20/1998	RANDELL L. MILLS	9113-23US	7937

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FARKAS & MANELLI, PLLC
2000 M STREET, N.W.
7TH FLOOR
WASHINGTON,, DC 200363307

EXAMINER	
KALAFUT, STEPHEN J	
ART UNIT	PAPER NUMBER
1745	

MAIL DATE	DELIVERY MODE
07/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/009,837	MILLS, RANDELL L.	
	Examiner	Art Unit	
	Stephen J. Kalafut	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 June 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-300* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-300* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 31 May 2007 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 17-300, for reasons of record, are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. See paper no. 14, pages 1-2.

Claims 17-300, for reasons of record, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. See paper no. 14, pages 2-7.

Applicant's arguments filed May 2007 have been fully considered but they are persuasive.

Applicant argues that many of his references have passed peer review, and thus should be considered by the "Committee". The failure of some of these references to go through peer

review is merely one reason why these references are not found persuasive. Every attachment of applicant's has also been found unpersuasive for other reasons, and none found unpersuasive for the lack of peer review alone.

Applicant argues that the "Committee" provides no support for the conclusion that some of applicant's attachments speculate hydrino formation as an explanation for data not necessarily caused thereby, such as "excessive heat" or Balmer line broadening. This is not persuasive because the reasons for this conclusion are set forth in the Appendix to paper no. 20060502, starting on page 8.

Applicant argues that the "Committee" errs in its calculations concerning the theoretical differences in applicant's postulated energy levels, by ignoring the energy transferred to the catalyst, and by incorrectly setting p = 0. To deal with this latter point first, since applicant postulates principle quantum numbers n as equaling 1/p, p = 0 would simply be another way of expressing n = infinity, which is known from standard quantum mechanics, the existence of which applicant (along with n being positive integers) does not dispute. In taking n = infinity , or p = 0, into account, the Examiner was merely giving applicant the benefit of the doubt concerning the value of q = 4, which is otherwise not accounted for by applicant's theory. Applicant differs from QM by merely postulating fractional values of n. Even taking into account the energy transferred to the catalyst, equaling even multiples of q (where q = 13.6 eV), applicant predicts the value of 5, which would be q = 7, minus q = 2, but this value is not observed. Also, by alleging this transfer of energy to the catalyst, applicant is stating that the energy transferred between different levels of p can somehow be split, between q = 2 and the rest

of the overall q value, even through there is nothing in his postulated hydrino atom that can give out or receive energy in an amount of q = 2.

Applicant argues that the Heisenberg Uncertainty Principle as applied by Krieg has no basis in fact, as shown by Lieb, but also faults the approach by Lieb as "physically baseless". See also the Appendix to paper no. 20060502, starting on page 18.

Applicant argues that he need not "understand the precise theoretical basis for why his invention works" (emphasis applicant's), and that he has disclosed his invention sufficiently to enable one of ordinary skill in the art to practice it. Applicant also alleged that the "Committee" has twisted his word into a "straw man" argument that "an inventor is free to put forth any theory he wishes". The "Committee" does not say that applicant believes that an inventor may "put forth any theory he wishes". The Examiner merely states that the lack of a requirement to precisely understand the theory behind one's invention does not permit one to allege a theory that is not in accordance with accepted scientific principles.

Applicant argues that the Balmer line broadening shown by Cvetanovic is independent of the orientation of the observer. Thus, the Abstract of Cvetanovic is incorrect. However, a viewing of Figure 4c shows a different overall curve shape, which is not merely the result of a difference in scale. At the wavelength of 656.0 nm, for example, the level of I (a.u.) appears to be close to half way between zero and 500 a.u., thus falling between 200 and 250 a.u., while in figures 4a and 4b, the level of I at 656.0 nm appears to be much closer to zero. The curves in figures 4a and 4b appear to be more smoothly concave going up to the peak from the surrounding zero background, while in figure 4c, there appears to be a plateau between the peak and the surrounding zero background.

Applicant faults EarthTech, whose "Mills experiment showed no detectable sign of excess heat" for being a "competitor", but also points to other labs which have "validated Applicant's experiments". This shows a contradictory standard by applicant. Results agreeing with his are alleged to be valid and independent, but results that differ arise from what he deems to be competition, and cannot be considered unbiased.

Applicant argues that Attachments A through R relate "to issues involving the improper examination of this application and defective nature of the rejections in this case", and further states that while none of these "contain data relating to the scientific merits of the present invention", this does not absolve the Committee from addressing "all outstanding issues relating to the merits of the rejections in this case". This incorrectly assumes that the scientific merits of the present invention and the merits of the present rejections are distinct from each other, which they are not. The merits of the invention and of the rejections of this case are directly related. The rejections allege that the invention lacks scientific merit. On the other hand, if the invention has scientific merit, the rejections do not have merit. Because the Attachments A through R do not address the scientific merit of the invention, they also do not relate to the merits of the rejections. None of these Attachments address the scientific issues underlying the rejections. Even if everything brought up in these Attachments is correct, such as allegedly improper examination or contact with a Dr. Robert Park, none of this bears any relevance concerning the basis for the rejection, the difference between the theory underlying applicant's invention and accepted science.

Applicant states that he sees no need to get into a debate over the differences between "theoretical" and "scientific" grounds for rejection. The Examiner agrees with this, but points

out that it was Applicant who first raised the argument concerning "theoretical" and "scientific" grounds, thus implying that these are distinct.

This is a Request For Continued Examination of applicant's earlier Application No. 09/009,837. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk

STEPHEN KALAFUT
PRIMARY EXAMINER
GROUP 1700